Supreme Court, U.S.
FILED
OCT 30 1985
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-572

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

RINGSBY TRUCK LINES, INC. and RINGSBY-PACIFIC, LTD.,
Petitioners,

vs.

TRUCKING EMPLOYERS, INC., TRUCKING MANAGEMENT, INC., CALIFORNIA TRUCKING ASSOCIATION, TRANSCON LINES, CONSOLIDATED FREIGHTWAYS CORP., GARRETT FREIGHT LINES, INC., YELLOW FREIGHT SYSTEMS, INC., DiSALVO TRUCKING CO., LEE WAY MOTOR FREIGHT, INC., and ILLINOIS-CALIFORNIA EXPRESS, INC.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

CONSOLIDATED BRIEF IN OPPOSITION

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QUESTION PRESENTED

Do the "special and compelling reasons" required for the granting of review on writ of certiorari (Rule 17.1) exist here, where (a) the judgment for respondents below was entered and affirmed simply on the ground that there was no substantial evidence to support the antitrust conspiracy claim that petitioners made, (b) there was no substantial evidence to support that claim and (c) petitioners litigated the conspiracy issue in prior litigation and lost so that principles of collateral estoppel furnished an additional and independent basis for the judgment?

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Respondents.[1]

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

CONSOLIDATED BRIEF IN OPPOSITION

STATEMENT OF THE CASE

Petitioners Ringsby Truck Lines, Inc. and Ringsby-Pacific, Ltd. (collectively "Ringsby") are commonly owned trucking companies. Respondents Trucking Employers, Inc. ("TEI") and its successor Trucking Management, Inc. ("TMI") are employer bargaining associations composed of member regional trucking associations like respondent California Trucking Association ("CTA"). The other respondents are trucking companies who were represented by TEI in national negotiations with the Brotherhood of Teamsters ("Teamsters") in

[1] The listing of parents, subsidiaries and affiliates of respondents required by Rule 28.1 is attached to this brief as Appendix 1.

1976. Although represented by TEI prior to 1976, Ringsby was not represented by TEI in the 1976 negotiations.

The Teamsters struck the entire trucking industry, including Ringsby, for several days in April, 1976. TEI then settled. Ringsby did not, and the Teamsters struck Ringsby again in August, 1976 when Ringsby refused to accept contract terms that were more favorable to Ringsby than the terms which TEI had accepted to end the April strike. Ringsby fought back with litigation.

First, Ringsby filed a series of cases against the Teamsters only. Ringsby claimed in those cases, among other things, that the Teamsters had struck it in April, 1976, and had gotten the Teamster-employer National Grievance Committee ("NGC") to rule that strike legal in 1977, pursuant to an antitrust conspiracy with respondents. Ringsby then filed this case, alleging that the August, 1976 strike was also concerted and that it had been injured by that strike.

In the prior Teamster cases, Ringsby tried to prove that the April, 1976 strike and the NGC decision were concerted by introducing (1) statements by a Teamsters attorney at the 1977 NGC proceedings that the Teamsters had always struck represented and unrepresented employers alike when the Teamsters' existing contracts expired without their new contract demands having been met, whether or not a bargaining impasse had occurred at that point and (2) evidence that some represented companies had expressed concern before the April, 1976 strike and contract that Ringsby might get a better contract than the represented companies.

Ringsby lost those cases. A district court concluded after a bench trial that the Teamsters had adopted and implemented its labor policies vis-a-vis Ringsby unilaterally and without consultation with any of the respondents. (C.R. 370, Exhibit K)[2] Ringsby initially appealed the judgments in those cases,

[2] Documents in the clerk's record on appeal are cited "C.R.___." The reporter's transcript submitted on appeal is cited "C.T.___." Ringsby's Petition is cited "Pet. ___." The written decisions of the court of appeals and district court respectively are cited "Pet. App. A-___" and "Pet. App. C-___"

then tried to avoid their collateral estoppel effects by settling with the Teamsters and petitioning the appellate court to vacate the judgments. The Court of Appeals for the Ninth Circuit dismissed the appeal as moot, but denied Ringsby's motion to vacate, stating:

> "We do not see why appellant should be permitted to avoid the collateral estoppel effect of the district court's findings by settling this dispute on appeal and petitioning for vacation of the court's adverse findings."

Ringsby Truck Lines v. Western Conference of Teamsters, 686 F.2d 720, 721, n.1 (9th Cir. 1982).[3]

Notwithstanding the Ninth Circuit's order, the district court below[4] permitted Ringsby to go to trial on its claim that the August, 1976 strike was concerted. In order to prove that claim, Ringsby introduced the same evidence it had used in the prior cases, plus evidence that some of the respondent trucking companies (and many other trucking companies) had competed with Ringsby during the August, 1976 strike.[5]

After Ringsby rested, the district court below granted a directed verdict for respondents on the ground that there was no substantial evidence to support Ringsby's antitrust claim. (C.R. 656; R.T. 21:3004-3012) The district court elected not to rely on collateral estoppel in granting the directed verdict. (Pet. App. C-9-11) Instead it found that there was nothing to support an inference that the August 26 strike was the product of a conspiracy instead of the result of the unilateral action of the Teamsters acting in their own interest. (R.T. 21:3009; Pet. App. C-2)

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[3] Ringsby did not appeal that order to this Court.

[4] The district judge below was not the same one who entered judgments against Ringsby in the prior cases.

[5] Ringsby also introduced a letter which respondent CTA sent to Ringsby when Ringsby indicated it was resigning from CTA and which stated that Ringsby's continued support was "an obligation" in view of all that CTA had done for the trucking industry. (RT 8:1090-1093) Ringsby's Petition does not mention this letter. As the court of appeals stated, the letter was plainly not evidence of any conspiracy. (Pet. App. A-4)

The Court of Appeals for the Ninth Circuit agreed. It affirmed the judgment for respondents in an unpublished opinion, stating that Ringsby did not present substantial evidence of a conspiracy or substantial evidence that the alleged conspiracy caused Ringsby any injury. (Pet. App. A-1) Ringsby's petitions for rehearing and rehearing *en banc* were denied.

REASONS FOR DENYING THE WRIT

Ringsby fails to show any "special and important reasons" to grant the writ. (Rule 17.1) Nowhere does the Petition demonstrate that any legal standard employed by the decision below conflicts with any standard employed by other circuit courts or this Court. Nor does the Petition describe any important question of federal law which has not been, but should be, settled by this Court. Indeed, the Petition does not identify any way in which the unpublished opinion below will affect federal jurisprudence in any respect at all.

In addition, the court of appeals was correct in its conclusion that Ringsby failed to present substantial evidence of a conspiracy or substantial evidence that the alleged conspiracy caused Ringsby any injury. Although the court of appeals did not reach the question whether the judgment below was also required by principles of collateral estoppel, those principles provided an independent and additional ground for affirming the judgment.

ARGUMENT

I. THE COURT OF APPEALS' TREATMENT OF RINGSBY'S "CIRCUMSTANTIAL EVIDENCE" DID NOT CONFLICT WITH PRIOR DECISIONS OF THIS OR ANY OTHER COURT.

Ringsby claims that the court of appeals "in effect eliminated circumstantial evidence as a predicate for liability in Sherman Act conspiracy cases." (Pet. 8) The decision below

did no such thing. To the contrary, the court of appeals stated at the outset that Ringsby was entitled to "the benefit of every reasonable inference." (Pet. App. A-1)

The Court of Appeals concluded, however, that the evidence which Ringsby presented did not create any reasonable inference that the August, 1976 strike resulted from a conspiracy between the Teamsters and respondents. That conclusion was entirely consistent with the decisions of this Court and with common sense.

Ringsby's "circumstantial evidence" consisted in the first instance of statements by a Teamsters' attorney at the 1977 NGC proceedings that the Teamsters had always struck unrepresented trucking companies as well as companies represented by TEI when the Teamsters' contracts had expired without their new contract demands having been met, whether or not a bargaining impasse had occurred at that juncture. As the Fifth Circuit has said, such an effort by unions to impose standardized wages and working conditions on all competitive employers is "a fact of commercial life known to all unions," and if such conduct were treated as actionable under the antitrust laws, "labor policy would be stood on its head." *Embry-Riddle Aeronautical University v. Ross Aviation, Inc.*, 504 F.2d 896, 903 (5th Cir. 1974). Recognizing that, this Court has stated that "no case under the antitrust laws could be made out" by such evidence. *United Mine Workers v. Pennington*, 381 U.S. 657, 665 (1965).[6]

Second, Ringsby claimed that expressions of "concern" by some represented employers before the April, 1976 strike and contract that the Teamsters might give Ringsby better contract terms constituted circumstantial evidence that the Teamsters'

[6] The court of appeals also noted correctly that these statements were made at the NGC proceedings in connection with the April, 1976 strike and referred to the circumstances of that strike, where unrepresented employers were struck when the represented employers were being struck; they had no reference to the circumstances of the August, 1976 strike where the represented employers were operating while Ringsby was struck. There is nothing in this Court's decisions which sanctions, much less requires, the drawing of illogical inferences.

August, 1976 strike was concerted. But as one labor commentator has observed, it is "virtually inevitable that the bargaining process will include at least some discussion of whether the union intends to demand a uniform wage rate from all employers." Leslie, *Principles of Labor Antitrust,* 66 U. Va. L. Rev. 1183, 1209, n.89 (1980). Consequently, as Professors Turner and Areeda have stated:

> "[N]o conspiracy or agreement should be found at all in cases where an employer merely expresses concern about being unfairly prejudiced by uniquely high wages and a union reassures him that he will not be so prejudiced."

Areeda & Turner, *Antitrust Law* § 229e, p. 211 (1978). In this case, there was not even evidence of such union "reassurance."

Finally, Ringsby claimed that "circumstantial evidence" of the claimed conspiracy could be found in the fact that some of the trucking company respondents (and many other trucking companies) competed with it during the August, 1976 strike. As the court of appeals observed, "this is competitive behavior, which the antitrust laws seek to foster. (Pet. App. A-4) Furthermore, it is behavior which was in the legitimate self-interest of those who engaged in it. This Court made it plain in *First National Bank of Arizona v. Cities Service,* 391 U.S. 253 (1968), where it affirmed summary judgment in an antitrust case directed at behavior which was in the defendant's legitimate self-interest, that such behavior is ordinarily not evidence of a conspiracy. (391 U.S. at 279 and 285-87)[7]

In short, Ringsby's problem below was not that the court of appeals read circumstantial evidence out of antitrust cases; Ringsby's problem was that it failed to present any evidence, circumstantial or otherwise, from which a legitimate inference of conspiracy could be drawn.

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[7] Ringsby tries to create the impression in its Petition that a witness testified that competing with a struck competitor was "not customary." (Pet. 10) It fails to disclose that the witness explained that there was simply no custom, one way or the other. (RT 8:1127-1134; 11:1474-1475; 15:2031-2036)

II. THE COURT OF APPEALS DID NOT VIOLATE CONTINENTAL ORE.

Ringsby claims that the court of appeals violated this Court's decision in *Continental Ore v. Union Carbide and Carbon Corp.*, 370 U.S. 690, 699 (1962) by improperly segregating the evidence, and weighing and interpreting each segment, instead of giving Ringsby the benefit of all inferences which the evidence as a whole supported. The court of appeals did not do this either.

The court of appeal did, to be sure, analyze each element of evidence which Ringsby invoked to support its claim, but there is nothing wrong with that. As the court of appeals elsewhere stated:

> "[W]e are mindful of the fact that 'plaintiffs should be given the full benefit of their proof without tightly compartmentalizing the various factual components and wiping the slate clean after scrutiny of each.' . . . But there can be no synergistic result such as [plaintiff] claims from a number of acts none of which show causal antitrust injury to [plaintiff]."

California Computer Products, Inc. v. International Business Machines Corp., 613 F.2d 727, 746 (9th Cir. 1979). So here, the court of appeals simply concluded that zero plus zero is zero. *Continental Ore* does not teach otherwise.

III. THE COURT OF APPEALS DID NOT MISAPPLY MONSANTO.

Ringsby claims that the court of appeals "misapprehended the purport" of this Court's decision in *Monsanto Co. v. Spray-Rite Service Corp.*, ____ U.S. ____, 104 S. Ct. 1464 (1984). (Pet. 8-9) There is nothing to this claim either.

The court of appeals simply held that Ringsby was required to prove the essential elements of conspiracy described in *Monsanto*—i.e., "a conscious commitment to a common scheme designed to achieve an unlawful objective." (Pet. App. A-2) Ringsby does not claim that that was an improper standard. Nor could it do so. This Court made it plain in

Monsanto that those proof requirements dated back to *American Tobacco Co. v. United States*, 328 U.S. 781 (1946). *See Monsanto v. Spray-Rite Service Corp., supra*, 104 S. Ct. at 1471.

Ringsby claims instead that the court of appeals erred in referring to *Monsanto* as a case "which also involved an appeal from a directed verdict" because *Monsanto* was really an appeal from a jury verdict for the plaintiff. (Pet. 9) Ringsby is technically right, but its conclusion that *Monsanto* does not apply in reviewing a directed verdict is absolutely wrong. This Court expressly undertook in *Monsanto* to clarify the law as to what proof would enable a plaintiff to "survive a motion for a directed verdict." See *Monsanto v. Spray-Rite Service Corp., supra*, 104 S. Ct. 1464, 1468. Furthermore, the elements of proof of a conspiracy stated by *Monsanto* (and *American Tobacco*) obviously are not changed by the procedural posture of the case.

Ringsby also claims that the court of appeals misapplied *Monsanto* by not finding its evidence sufficient to satisfy the conspiracy elements. (Pet. 9) But nothing in *Monsanto* suggests that a plaintiff can survive a directed verdict if it fails to offer substantial evidence of a conspiracy. That is what happened in Ringsby's case.

IV. THE COURT OF APPEALS DID NOT IGNORE THE IMPORTANCE OF ENFORCEMENT OF THE ANTITRUST LAWS OR THE RIGHT TO JURY TRIAL.

Finally, Ringsby complains that the court of appeals shrugged off both this Court's emphasis on the importance of the antitrust laws and on the right to jury trial as a means of enforcing those laws. (Pet. 11-12) There is nothing in the court of appeals' decision which supports these charges. As Ringsby's Petition establishes, the Court of Appeals for the Ninth Circuit has long been zealous in enforcing the antitrust laws. (Pet. 5-6) Ringsby's case failed below not because of any lack of antitrust zeal on the part of the court of appeals, but because Ringsby failed to present any substantial evidence to support its antitrust claims. This Court has never held that

there is any right to a jury trial in an antitrust case—or in any other case—where substantial evidence is lacking.

V. THERE WAS AN ALTERNATIVE GROUND FOR AFFIRMING THE JUDGMENT BELOW.

Ringsby says that the conspiracy that caused the April, 1976 strike was the same conspiracy that caused the August, 1976 strike. (Pet. 12-13) That was indeed what Ringsby claimed below, and that claim made the judgment below doubly correct.

The circumstances of the April, 1976 strike were fully litigated in Ringsby's prior cases against the Teamsters, and the court there made specific findings that the Teamsters' actions vis-a-vis Ringsby were taken "unilaterally" and without consultation or discussion with TEI or any other employer association or individual employer. (C.R. 370, Ex. K, p. 7)

Collateral estoppel, or "issue preclusion," bars Ringsby from relitigating issues litigated and determined in the prior cases. As this Court has held, the "whole premise of collateral estoppel is that once an issue has been resolved in a prior proceeding, there is no further factfinding function to be performed." *Parklane Hosiery Co. v. Shore,* 439 U.S. 322, 336 n.23 (1979). Ringsby having litigated the existence of the conspiracy in the prior cases that it says caused the August strike, and the district court in that case having found that that conspiracy did not exist, Ringsby was collaterally estopped from asserting that conspiracy claim again below. That was another, independent reason why judgment below was correct and had to be affirmed.

CONCLUSION

The Petition should be denied.

Dated: October 29, 1985.

Respectfully submitted,

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APPENDIX 1

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LIST OF RELATED COMPANIES REQUIRED BY UNITED STATES SUPREME COURT RULE 28.1

The following is a listing, in accordance with Supreme Court Rule 28.1, of parent companies, subsidiaries (except wholly-owned subsidiaries) and affiliates, if any, of each respondent:

The Coastal Corporation
American Natural Resources Company
ANRFS Holding, Inc.
ANR Freight System, Inc.
Consolidated Freightways, Inc.
Consolidadora De Fletes Mexico, S.A. de C.V.
Commercial Lovelace Motor Freight, Inc.
ICX, Inc.
Pepsico, Inc.
R.W.L. Investments, Inc.
Yellow Freight System of Delaware